

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CRIMINAL ACTION NO. 1:13CR9

DAVID REES,

Defendant.

- - -

Proceedings had in the Plea Hearing of the above-styled
action on May 13, 2013, before the Honorable John S. Kaull,
Magistrate Judge, at Clarksburg, West Virginia.

APPEARANCES:

FOR THE GOVERNMENT: ROBERT H. MCWILLIAMS, JR., ESQUIRE
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FOR THE DEFENDANT: TODD R. MEADOWS, ESQUIRE
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I N D E X

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(For the Government)

Jason Gandee	44	47		
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1 P R O C E E D I N G S

2 (05-13-2013, 9:58 o'clock a.m., defendant present)

3 THE COURT: Good morning everyone. Would the Clerk
4 please call the next matter?

5 THE CLERK: United States of America versus David
6 Rees, Case Number 1:13CR9. The defendant is present in
7 person. This matter comes on for initial appearance,
8 arraignment and plea hearing. Will counsel please note
9 their appearance for the record?

10 MR. MCWILLIAMS: Good morning, Your Honor. Robert
11 H. McWilliams, Jr., for the United States.

12 MR. GRIMES: Good morning, Your Honor. Joseph
13 Grimes, Grimes and Grimes from Philadelphia and Cherry Hill,
14 New Jersey and I have my local counsel Todd Meadows with me
15 today. Mr. Rees is present.

16 THE COURT: All right. Thank you. Mr. Rees,
17 would you please stand in your place, raise your right hand
18 and be sworn?

19 (Defendant Standing)

20 (The Defendant was sworn)

21 THE CLERK: You may be seated.

22 (Defendant Seated)

23 THE COURT: Mr. Rees, I've had you sworn in order
24 to answer a number of questions. If there's any question
25 that I ask you that you don't understand for any reason, I

1 want you to tell me that you don't understand it before you
2 try to answer it. If you need to talk with your counsel at
3 any time, you have a right to do that. You have a right to
4 privacy when you do talk to counsel. This is a small room.
5 The microphone in front of you is broadcasting and recording
6 what you have to say, so you'll need to mute that and either
7 talk softly or ask for a recess. I'll grant a recess so you
8 can go outside and talk in private with counsel. Do you
9 understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: You are required to give truthful
12 answers to the questions that the Court asks you. If you
13 give false testimony in response to a question that is
14 material to the matter before the Court, you could be
15 separately charged with perjury or false swearing while
16 under oath or you could be cited for contempt of court.
17 Whether cited or charged, if you would be later convicted of
18 the citation and/or charge, you could face fine and/or
19 imprisonment. That fine and/or imprisonment would be in
20 addition to any fine and/or imprisonment you may face by
21 this proposed plea of guilty to the one count Information
22 which I believe charges--let me step back a moment--two
23 counts Information with charges you with tax evasion for the
24 year 2006 and filing a false tax return in Count Two. Do
25 you understand that?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: I want to encourage you at any time
3 during this proceeding and since your counsel haven't been
4 in front of me before, Mr. McWilliams knows this, my plea
5 proceedings take a relatively long time compared to some
6 District Judges and others. I try to make sure I don't see
7 you again in a Rule 11 proceeding later on--or not a Rule 11
8 but a 2255 later on. So I'm fairly careful to make sure
9 that you understand and that any plea that you make is
10 knowingly and voluntarily made, intelligently made and that
11 you make it understanding the potential consequences of that
12 plea of guilty and what rights you're giving up and that
13 you're competent, of course, to enter a plea of guilty. Do
14 you understand all of that, sir?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And that's why I encourage you at any
17 time to talk with your lawyer. That's what you have a
18 lawyer for. Do you understand that, sir?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You're not going to offend me by
21 wanting to talk to your lawyer.

22 All right. My understanding is that this is pursuant to
23 a written plea agreement which is dated March 21st of 2011.
24 Is that correct, Mr. McWilliams?

25 MR. MCWILLIAMS: That is correct, Your Honor.

1 THE COURT: And you have that and are ready to
2 summarize that for us. Do you have a copy, Mr. Rees?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Now what we're going to do is have Mr.
5 McWilliams go through that fairly quickly outlining the key
6 provisions in it. I want you to follow along so it is
7 refreshed in your mind and you can answer questions about it
8 later on. All right?

9 THE DEFENDANT: Yes, sir.

10 MR. MCWILLIAMS: Your Honor, paragraph one
11 indicates that he will plead guilty to Count One of the
12 Information charging him with tax evasion for tax years
13 2006.

14 Paragraph two sets forth the maximum penalty that
15 he could be exposed to which is imprisonment for a term of
16 not more than five years, a fine of not more than two
17 hundred and fifty thousand dollars, and a period of
18 supervised release of at least two years and not more than
19 three years, as well as there's the requirement of a special
20 mandatory assessment of a hundred dollars.

21 Paragraph three indicates that he will be truthful and
22 cooperative with representatives of the United States
23 Attorney's Office.

24 Paragraph four makes it clear that the information he
25 provides to us can't be used against him; at least to the

1 extent that we will contend that his guideline level is 27
2 or lower.

3 Paragraph five indicates we'll tell the Court about his
4 cooperation at sentencing.

5 And then paragraph six the parties stipulate he
6 committed the offense contained in Count Two of the
7 Information, which is filing a false last quarter 2006
8 return on a Form 941, and that that would be relevant
9 conduct for the count--for the count of conviction and would
10 include his role in the offense and all tax for tax years
11 2005 through 2009 for all personal and 941 returns.

12 He agrees to pay restitution in full on all relevant
13 conduct for tax years 2005 through 2009 and paragraphs 6a
14 through f outline--I'm sorry, outline how those payments
15 will be made.

16 Paragraph seven, the parties stipulate that relevant
17 conduct provable by the United States will not exceed a loss
18 of--more than one million dollar loss, sophisticated means
19 enhancement and role in offense for 941 charge.

20 Paragraph eight makes it clear that the defendant may
21 contend his relevant conduct is less than a million dollars
22 and he can contend that the enhancement for sophisticated
23 means and role in the offense are not applicable.

24 Paragraph nine makes it clear that these are nonbinding
25 recommendations in the plea agreement and should the Court,

1 at sentencing, not follow the United States'
2 recommendations, he will not be able to withdraw his guilty
3 plea.

4 Provided he pays the hundred dollar special assessment
5 fee on or before the day of sentencing, I make the following
6 nonbinding recommendations and these are in paragraph ten.

7 If, in the opinion of the United States Attorney's
8 Office the defendant accepts responsibility, and the
9 Probation Officer also concurs, then the United States will
10 recommend a two level reduction for acceptance of
11 responsibility and three levels, if applicable. United
12 States will recommend that any sentence of incarceration
13 imposed should be at the lowest end of the applicable
14 guideline range.

15 Paragraph eleven sets forth some conditions under which,
16 if he basically breaks the plea agreement, the United States
17 can also break the plea agreement.

18 Paragraph twelve makes it clear that the United States
19 has the right to provide the Court and the Probation Officer
20 information about the defendant's background, offense and
21 other pertinent things for the purpose of sentencing.

22 Paragraph thirteen makes it clear that the sentencing
23 guidelines are now advisory and no longer mandatory and that
24 the Sentencing Court may ascertain and impose a sentence
25 below or above the applicable guideline range, so long as

1 that sentence is reasonable and within the statutory maximum
2 as described earlier.

3 Paragraph fourteen indicates that the defendant will
4 retain his appellate rights and rights to collaterally
5 attack the sentence only with respect to--with respect to
6 any sentence imposed using a total offense level before any
7 reduction for acceptance of responsibility higher than level
8 20.

9 Paragraph fifteen indicates that if the defendant's plea
10 is not accepted by the Court or is later aside or if the
11 defendant breaches any part of the agreement, then the
12 United States Attorney's Office will have the right to void
13 the agreement.

14 And paragraph sixteen finally makes it clear, Your
15 Honor, that these six pages contain the entire agreement
16 between Mr. Rees and the United States. In other words
17 there's no other side deals. There's no oral promises.
18 Everything we've agreed to is right here in this writing.

19 I would ask Mr. Grimes if he could provide the original
20 to me, I would appreciate it.

21 MR. GRIMES: I mailed it to you.

22 MR. MCWILLIAMS: Well, I couldn't find the original
23 signed copy in my file the other day but this is a true and
24 correct copy.

25 THE COURT: All right. Thank you.

1 Mr. Rees, were you able to hear and follow the
2 summarization?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Is the agreement I'm now holding up in
5 my hand and which was just handed to me by Mr. McWilliams,
6 the agreement that contains the entirety of your deal with
7 the United States Attorney's Office?

8 THE DEFENDANT: Yes it is.

9 THE COURT: It's ordered filed and made a part of
10 the record.

11 Under *Frye* is this the sole offer that was made to
12 this defendant, Mr. McWilliams?

13 MR. MCWILLIAMS: You know, Your Honor, I really
14 can't remember. It's certainly the best offer.

15 THE COURT: Okay.

16 MR. MCWILLIAMS: Let's put it that way. I mean
17 this case has been going now for several years. We've been
18 discussing it back and forth over those years, Mr. Grimes
19 and I, but I'm sure that's the best offer we've made.

20 THE COURT: Mr. Grimes, do you agree that there may
21 have been other offers but that this is the best of the
22 offers?

23 MR. GRIMES: That is correct. We went back and
24 forth on the numbers and there's still some issues obviously
25 as we talk about the numbers but this is the best offer.

1 THE COURT: And did you discuss with your client
2 each and every offer as it came down?

3 MR. GRIMES: Absolutely.

4 THE COURT: Do you concur in that, Mr. Rees?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: All right. I think that satisfies
7 *Frye*.

8 All right. Mr. Rees, what you're pleading guilty to is
9 a Class D felony, I believe. Do you understand that?

10 THE DEFENDANT: Yes, sir.

11 THE COURT: Do you understand that, as a person who
12 is pleading guilty to a felony, you have a right to have
13 today's proceeding conducted by the United States District
14 Judge who holds court in this District--portion of the
15 District?

16 THE DEFENDANT: Yes, sir.

17 THE COURT: I'm not that--I am not a District
18 Judge. I'm what's called a United States Magistrate Judge.
19 I think the best way to say it is a District Judge doesn't
20 need your permission to proceed today. I, however, cannot
21 proceed unless you give consent. If you give consent it
22 must be your own free, voluntary, willing decision to give
23 consent. If you give consent what I will do is conduct this
24 Rule 11 proceeding, ask the appropriate questions, or what I
25 believe are the appropriate questions. At the conclusion of

1 it I will hear whatever plea it is you may make to the one
2 count Information--the count in the Information you're going
3 to plead guilty to and decide from the evidence that follows
4 that whether it's appropriate to accept it or not. If so,
5 then I will write an order to that effect. If not, I will
6 also write an order to that effect and give my reasonings.
7 Do you understand all of that?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: The District Judge will still be the
10 Judge who will sentence you. In no event could I ever
11 sentence you in a felony case. Do you understand that, sir?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: And the overall reason is a District
14 Judge is appointed by the President of the United States
15 under Article III of the United States Constitution and has
16 constitutional authority under that Article. A Magistrate
17 Judge is a statutorily appointed position with limited
18 statutory authority and I'm acting within the limits--strict
19 limits of my statutory authority if you consent. Do you
20 understand that?

21 THE DEFENDANT: Yes, Your Honor.

22 THE COURT: Do you want to consent?

23 THE DEFENDANT: I do.

24 THE COURT: Is that your own free, voluntary,
25 knowing and intelligent decision?

1 THE DEFENDANT: Yes it is.

2 THE COURT: I'm going to provide you with a form.
3 If you're willing to put it in writing you may sign that
4 form after reviewing it at counsel's table.

5 (Pause - Counsel and Defendant reviewing document)

6 THE COURT: The defendant's written Waiver and
7 Consent is ordered filed and made a part of the record.

8 Mr. McWilliams, I take it that the Government is the
9 sole victim in this particular matter?

10 MR. MCWILLIAMS: Yes, Your Honor.

11 THE COURT: And the Government's representative is
12 seated next to you?

13 MR. MCWILLIAMS: Yes, Your Honor.

14 THE COURT: All right. Very good.

15 Mr. Rees, what is your full name?

16 THE DEFENDANT: David Allen Rees.

17 THE COURT: And how old a man are you?

18 THE DEFENDANT: Fifty (50).

19 THE COURT: How far did you go in school?

20 THE DEFENDANT: Junior in college.

21 THE COURT: I will take it that you can read,
22 write, speak and understand English?

23 THE DEFENDANT: Yes, Your Honor.

24 THE COURT: Are you having any problems seeing in
25 order to read today?

1 THE DEFENDANT: No, sir.

2 THE COURT: Are you having any problems hearing?

3 THE DEFENDANT: No, sir.

4 THE COURT: Are you having any problems
5 concentrating?

6 THE DEFENDANT: No, sir.

7 THE COURT: Then you have understood everything
8 that I have either asked or told you in your presence?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Have you been treated for a mental
11 illness in the last six months?

12 THE DEFENDANT: No, sir.

13 THE COURT: Have you been treated for addiction to
14 narcotic drugs within the last sixty days?

15 THE DEFENDANT: No, sir.

16 THE COURT: Is your mind clear as we speak
17 together?

18 THE DEFENDANT: Yes, Your Honor.

19 THE COURT: Mr. Grimes, you've worked with this
20 client for what, years?

21 MR. GRIMES: I think it's been going on three years
22 now, Your Honor. (Unintelligible/inaudible)

23 THE COURT: All right. Back to you, Mr. Rees,
24 within the last twenty-four hours have you been under the
25 influence of any kind of a controlled substance? That would

1 include a street drug. That would include prescription
2 medications that are controlled substances, whether they're
3 prescribed for you or another person, or over the counter
4 medications that are strong enough to have effects on your
5 cognitive functions.

6 THE DEFENDANT: Prescription drugs, Your Honor.

7 THE COURT: What kind of prescription drugs are you
8 taking?

9 THE DEFENDANT: Nexium.

10 THE COURT: All right. That's ordinarily something
11 to do with reflux.

12 THE DEFENDANT: Acid reflux; right.

13 THE COURT: All right. What else? Anything?

14 THE DEFENDANT: Propecia.

15 THE COURT: And what are you taking Propecia for?

16 THE DEFENDANT: Hair loss.

17 THE COURT: And what else?

18 THE DEFENDANT: Humira.

19 THE COURT: And what are you taking Humira for?

20 THE DEFENDANT: Psoriatic arthritis.

21 THE COURT: Now that's the Phil Mickelson
22 advertised drug?

23 THE DEFENDANT: That's correct, Your Honor.

24 THE COURT: All right. What else?

25 THE DEFENDANT: That's it.

1 THE COURT: Does the Nexium or the reflux disease
2 that you take the Nexium for in any way impact your ability
3 to hear, understand, and respond to my questions, talk with
4 your lawyer about your case or make decisions about your
5 case?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Does the Propecia or the condition that
8 you take it for in any way affect your ability to hear,
9 understand and respond to my questions, talk with your
10 lawyer about your case or make decisions about your case?

11 THE DEFENDANT: No, Your Honor.

12 THE COURT: Does the Humira or the psoriatic
13 arthritis that you take it for in any way impact your
14 ability to hear, understand and respond to my questions,
15 talk with your lawyer about your case or make decisions
16 about your case?

17 THE DEFENDANT: No, Your Honor.

18 THE COURT: Do the combination of those drugs or
19 the conditions or the effects of those conditions in any way
20 affect your ability to hear, understand and respond to my
21 questions, talk with your lawyer about your case or make
22 decisions about your case?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: Have you consumed alcohol in any form
25 in the last twenty-four hours?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: When and what and how much?

3 THE DEFENDANT: Wine with dinner last night;
4 probably two glasses.

5 THE COURT: Does the fact that you had wine with
6 dinner last night, as you've indicated two glasses, in any
7 way affect your ability to hear, understand and respond to
8 my questions, talk with your lawyer about your case or make
9 decisions about your case?

10 THE DEFENDANT: No, Your Honor.

11 THE COURT: Have you taken any over the counter
12 medications for pain, allergies, sniffles, sleeplessness?

13 THE DEFENDANT: Nothing.

14 THE COURT: Nothing in the last twenty-four hours?

15 THE DEFENDANT: No, Your Honor.

16 THE COURT: As you sit here today, other than the
17 conditions you've told me about and the medications that are
18 prescribed for them, do you have any other psychological,
19 psychiatric or physical condition which affects your ability
20 to hear, understand and respond to my questions, talk with
21 your lawyer about your case or make decisions about your
22 case?

23 THE DEFENDANT: No, Your Honor.

24 THE COURT: You are proposing to plead guilty to
25 Count One of a two count Information. Is that correct, sir?

1 THE DEFENDANT: Yes, Your Honor.

2 THE COURT: Have you read the Information?

3 THE DEFENDANT: Yes, Your Honor.

4 THE COURT: Then you have a copy of it, is that
5 correct?

6 THE DEFENDANT: I have it in front of me.

7 THE COURT: The Information in Count One charges
8 you with Tax Evasion for the tax year 2006. That is the
9 count that you are proposing to plead guilty to. Is that
10 correct?

11 THE DEFENDANT: That is correct, Your Honor.

12 THE COURT: The United States Attorney alleges in
13 that count that: From on or about January 1, 2006 through
14 on or about April 15, 2007, in Monongalia County, in the
15 Northern District of West Virginia--now that sets the stage
16 and they must be able to prove that in order for the Court
17 to have jurisdiction over this particular criminal charge.
18 Do you understand that?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: Next they alleged and must be able to
21 prove that it was you who committed this crime. They must
22 be able to prove that you, David Rees, did willfully, not
23 accidentally, not unwillfully, not unknowingly, willfully
24 attempt to evade and defeat a large part of the income tax
25 due and owing by him, you, to the United States of America

1 and imposed by Title 26 of the United States Code. Then it
2 goes on to allege: in the approximate amount of \$96,554.00
3 in a manner in which he paid personal expenses on a credit
4 card in the appropriate--in the approximate amount of
5 \$533,152.00, but only reported personal income to the IRS on
6 a false personal income tax return in the approximate amount
7 of \$188,316.00.

8 In violation of Title 26, United States Code, Section 7201.
9 Do you understand that's what the Government must be able to
10 prove?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Do you understand that you have certain
13 rights with respect to that charge and I'm going to go over
14 them under Rule 5 of the Federal Rules of Criminal
15 Procedure, this being your first appearance? You have a
16 right to remain silent. If you give up your right to remain
17 silent, anything that you say can and will be used against
18 you in this or any other court of law. Even if you may have
19 previously made a statement, the fact that you did does not
20 obligate you to make a statement to the authorities in the
21 future. If you start to make a statement you have a right
22 to stop in mid-word or sentence, stand on your right to
23 remain silent and say nothing further.

24 You have the right to the assistance of counsel for your
25 defense. You may retain your own counsel but if you were

1 unable to retain counsel, you have a right to apply to the
2 Court and ask the Court to consider appointment of counsel
3 for you. Whether appointed or retained, you have a right to
4 counsel at every stage of the proceedings against you and
5 during any questioning by the authorities. Do you
6 understood, and did you understand that you had those rights
7 even before today?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: Now, do you also understand that you
10 have a right under the United States Constitution to have
11 the Government present its case, the charges that it wants
12 to bring, through what is called a Grand Jury process?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: A Grand Jury, Mr. Rees, is a group of
15 sixteen or more persons who are selected from within, in
16 this case the Northern District of West Virginia. They
17 would meet in a room such as this. In fact, Grand Jury
18 attending Clarksburg would meet in this room. They act as a
19 screening committee. What they do is they hear witnesses,
20 they receive evidence, presented to them largely by the
21 United States Attorney's Office. However, they have a right
22 to subpoena such witnesses as they choose to subpoena. In
23 other words, they can take over an investigation and start
24 directing it in a direction that they want. Once they have
25 heard whatever evidence it is they are going to hear on a

1 particular matter, then they excuse everyone but the Grand
2 Jurors who heard that evidence from the room and they
3 deliberate in private concerning the evidence they have
4 heard and they take votes and their votes are to decide
5 whether there is probable cause to believe that a crime was
6 committed in violation of federal law and that in this
7 particular case you were the person who committed that
8 crime, or the accused is the person who committed the crime.
9 If twelve or more of the sixteen or more Grand Jurors who
10 heard the evidence believe there is such probable cause then
11 they return what is called a true bill or an Indictment and
12 the Indictment then becomes the formal written statement of
13 a criminal charge against an individual. Of course if
14 twelve or more cannot agree that there is such probable
15 cause, then they do not return an Indictment. They return
16 what's called a no true bill.

17 Probable cause is a legal word of art. It generally
18 means is something more likely than not to have occurred.
19 That's a very lay definition of probable cause.

20 The Prosecutor is not present during any of their
21 deliberations; nor are any of the investigatory witnesses.
22 This was set up in the Constitution to protect the
23 individual citizens, such as yourself, against excesses of
24 an arm of the Government. It was borne out of an experience
25 that the founding fathers had with the previous government,

1 which was the King of England.

2 No one can force you to give up this right to the Grand
3 Jury process; however, you can voluntarily, freely,
4 knowingly, intelligently give it up if that's what you want
5 to do. By doing so there will be no Grand Jury process and
6 it's your way of saying I consent to the United States
7 Attorney's Office filing directly against me, without going
8 through a Grand Jury, this one count--actually two count
9 Information, Count One of which I'm proposing to plead
10 guilty to. Do you understand everything I've just told you
11 about the Grand Jury?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Do you want to give up your right to
14 the Grand Jury process?

15 THE DEFENDANT: I'd like to give up my right to the
16 Grand Jury process.

17 THE COURT: That's your own free, voluntary,
18 knowing and intelligent decision?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: All right. I'm going to then provide
21 to you a waiver of the Indictment process and you may look
22 through that with your counsel and if you want to confirm
23 what you've just told me orally, then you may sign that
24 document.

25 (Pause - Defendant and Counsel reviewing document)

1 THE COURT: Now, Mr. Rees, while that's being
2 signed, Count Two of this one count Information (sic)
3 charges you with False Form 941 Tax Return and the United
4 States Attorney alleges in that that: On or about January
5 31, 2007, in or near Monongalia County, West Virginia, in
6 the Northern District of West Virginia, the defendant, David
7 Rees willfully made and willfully subscribed a false Form
8 941 tax return which contained and was verified by a written
9 declaration that it was made under penalties of perjury, and
10 which he did not believe to be true and correct as to every
11 material matter, in that the defendant was paying many of
12 his employees cash at AKA Enterprises, and such cash was not
13 declared on that Form 941 tax return, in violation of Title
14 26, United States Code, Section 7206(1).

15 The reason I raise this is it is the second count of the
16 two count Information that you're agreeing be filed directly
17 against you. I understand you're not going to plead guilty
18 to that count but you understand that it is going to be used
19 in the overall sentencing process. Is that correct?

20 THE DEFENDANT: Yes, Your Honor.

21 THE COURT: The Waiver of Indictment as signed by
22 Mr. Rees, countersigned by counsel and now countersigned by
23 me as having been signed in my presence, is ordered filed
24 and made a part of the record.

25 How did you and Mr. Grimes get along as lawyer and

1 client?

2 THE DEFENDANT: Very well, Your Honor.

3 THE COURT: You retained his services, did you?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: How did you and your local counsel get
6 along?

7 THE DEFENDANT: Very well also.

8 THE COURT: Did you discuss with Mr. Grimes and/or
9 local counsel the elements of the charge that is contained
10 in Count One, the charge you're proposing to plead guilty
11 to?

12 THE DEFENDANT: Yes, Your Honor.

13 THE COURT: Did you discuss with Mr. Grimes and/or
14 your local counsel the evidence that the Government says it
15 has and will use to prove the elements of the crime charged
16 against you in Count One of the Information?

17 THE DEFENDANT: Yes, Your Honor.

18 THE COURT: Did you actually review the evidence,
19 in other words, any disclosures that were made to your
20 counsel as part of the on-going investigation and informal
21 prosecution of this case?

22 THE DEFENDANT: Yes, Your Honor; we went over it
23 daily.

24 THE COURT: How many times would you say you and
25 Mr. Grimes and/or local counsel got together and talked

1 about his matter? Rough guess.

2 THE DEFENDANT: Fifty or sixty times.

3 MR. GRIMES: Judge, if I could help here. We
4 actually prepared a fairly extensive, with other co-counsel,
5 a fairly extensive reconstruction of the tax circumstances,
6 not just of AKA, but any related companies. We were sharing
7 that information all along and we were doing it with the
8 Government, so fifty or sixty times meeting definitely with
9 the client, numerous other meetings between us and
10 representatives of the Government going over these various
11 numbers.

12 THE COURT: And you concur in that, Mr. Rees?

13 THE DEFENDANT: Yes, Your Honor.

14 THE COURT: Now, after reviewing everything and
15 talking with your lawyers on numerous occasions, did you
16 come to a conclusion in your mind that if you went to trial
17 the Government could prove the elements of the offense
18 charged in Count One against you?

19 THE DEFENDANT: Yes.

20 THE COURT: Did you reach that conclusion on your
21 own? In other words, was it an independent reaching of the
22 conclusion or was it something that was fobbed off or forced
23 on you by your counsel?

24 THE DEFENDANT: No. It was independent, Your
25 Honor.

1 THE COURT: Did you discuss with your lawyers the
2 criminal proceedings that you have been going through and
3 will continue to go through?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did you and your lawyers discuss how a
6 jury trial would be conducted if you did not plead guilty?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Did you and your lawyers discuss the
9 statutory maximum penalty that you subject yourself to by
10 pleading guilty to Count One of the Information?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Then you understand that--from that
13 discussion and from paragraph two of your written plea
14 agreement that by pleading guilty to Count One you subject
15 yourself to not more than five years of imprisonment, not
16 more than two hundred and fifty thousand dollars in fine, or
17 both fine and imprisonment, plus a period of supervised
18 release of at least two years but not more than three years?

19 THE DEFENDANT: Yes, Your Honor.

20 THE COURT: You understand further that supervised
21 release is in addition to any term of imprisonment?

22 THE DEFENDANT: Yes, Your Honor.

23 THE COURT: Did you and your lawyers discuss how
24 the United States District Judge, Judge Keeley, will use the
25 Uniform Sentencing Guidelines in the sentencing process to

1 assist her in determining whether the actual sentence that
2 she is going to impose is fair and reasonable under the law
3 and facts applicable to your case and is within that
4 statutory maximum that I just reviewed?

5 THE DEFENDANT: Yes, Your Honor.

6 THE COURT: Did you and your lawyers discuss that
7 you have a right to appeal your conviction and your sentence
8 to the Fourth Circuit Court of Appeals within fourteen days
9 of the Judge's oral announcement of the sentence against
10 you?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did you also discuss with your lawyers
13 and understand from that discussion that you may
14 collaterally attack or collaterally challenge the sentence
15 and how that sentence is being executed, carried out, once
16 it's imposed by filing a motion under 28 U.S.C., Section
17 2255? That's commonly called a habeas corpus motion.

18 MR. GRIMES: Judge, I don't believe we specifically
19 discussed that so if we could just take a moment.

20 THE COURT: Sure. Absolutely.

21 (Pause - Defendant and counsel conferring)

22 THE DEFENDANT: I understand, Your Honor.

23 THE COURT: In fact if you'll turn to paragraph
24 fourteen of your written plea agreement, did you understand
25 from your review of that written plea agreement that if your

1 actual sentence is equal to a guideline calculated sentence
2 which has a total offense level, before any reduction for
3 acceptance of responsibility, the way I read this, of 20 or
4 lower, then you give up your right to appeal that sentence
5 to the Fourth Circuit Court of Appeals and you give up your
6 right to collaterally attack or challenge that sentence by
7 filing a writ of habeas corpus type motion under 28 U.S.C.,
8 Section 2255? Do you understand that?

9 THE DEFENDANT: Yes.

10 THE COURT: And that's the way you understood
11 paragraph fourteen of your written plea agreement?

12 THE DEFENDANT: Yes, sir.

13 THE COURT: You only keep those rights if the
14 actual sentence imposed is the same as or equal to a
15 guideline sentence with a total offense level, before any
16 reduction for acceptance of responsibility, is higher than a
17 level 20, is that correct?

18 THE DEFENDANT: Yes, sir.

19 THE COURT: And you intended to give up those
20 rights by signing the written plea agreement with paragraph
21 fourteen in it?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: And nothing about your understanding of
24 paragraph fourteen, or for that matter any of the other
25 provisions in the agreement has changed since you signed it

1 on November the 21st of last year and today?

2 THE DEFENDANT: That's correct.

3 THE COURT: Did you ask your lawyers questions?

4 THE DEFENDANT: Yes, sir.

5 THE COURT: Did they answer the questions that you
6 asked?

7 THE DEFENDANT: Yes, sir.

8 THE COURT: Is there any question that you asked
9 your lawyers that you think they improperly refused to
10 answer?

11 THE DEFENDANT: Not at all, sir.

12 THE COURT: Is there anything you asked your
13 lawyers to do for you that you think they improperly refused
14 to do?

15 THE DEFENDANT: No, sir.

16 THE COURT: Are you completely satisfied with the
17 legal assistance, the advice, the actions and the counseling
18 that have been provided to you by your lawyers?

19 THE DEFENDANT: Yes, sir.

20 THE COURT: Can you think of anything that they
21 should have done and did not do in your behalf?

22 THE DEFENDANT: Not at all.

23 THE COURT: Can you think of anything that they did
24 do and as you look back on what they did do, you wish they
25 hadn't done that?

1 THE DEFENDANT: No.

2 THE COURT: Mr. Rees, did your lawyers promise you
3 a specific amount of time of imprisonment or a specific
4 sentence from the United States District Judge when it comes
5 time for your sentencing some six or eight weeks from now?

6 THE DEFENDANT: They did not.

7 THE COURT: Do you still have the plea agreement in
8 front of you?

9 THE DEFENDANT: Yes, sir.

10 THE COURT: Did you read each and every line of
11 that written plea agreement on November the 21st of 2012?

12 THE DEFENDANT: I did, Your Honor.

13 THE COURT: Did you and your lawyers, one or the
14 other or both, go over each and every line of that plea
15 agreement before you signed it?

16 THE DEFENDANT: We did, Your Honor.

17 THE COURT: Did you understand each and every line
18 of that written plea agreement before you signed it?

19 THE DEFENDANT: I did, Your Honor.

20 THE COURT: Did you discuss your decision to sign
21 the plea agreement with any relatives or any close personal
22 friends before you signed it?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Is there any term or provision in the
25 agreement that you now want time to privately discuss with

1 counsel?

2 THE DEFENDANT: No, Your Honor.

3 THE COURT: Does the written agreement, as it now
4 exists in front of the Court, represent all of your deal
5 with the United States Attorney's Office?

6 THE DEFENDANT: It does, Your Honor.

7 THE COURT: In other words, has any one, including
8 your own attorney, made any other or different promises or
9 assurances of any kind to you in order to get you to plead
10 guilty then what are contained in the written plea
11 agreement?

12 THE DEFENDANT: They did not.

13 THE COURT: Now are you familiar with the term
14 nonbinding terms and provisions?

15 THE DEFENDANT: Yes, sir.

16 THE COURT: Does that mean to you--that term,
17 nonbinding, mean that while you and Mr. McWilliams' office
18 may have agreed to certain things in this agreement, the
19 United States District Judge, the Court, had no role in
20 negotiating, no role in preparing or signing the agreement
21 and in fact will not even consider the agreement until the
22 Presentence Investigation Report is prepared, until there's
23 an opportunity for you and the Government to have objected
24 to that report and until the Court has had an opportunity to
25 have hearings on either the objections or at sentencing or

1 both?

2 THE DEFENDANT: I understand.

3 THE COURT: Only then will the Court take up the
4 nonbinding provisions in this agreement. Do you understand
5 that?

6 THE DEFENDANT: Yes, Your Honor.

7 THE COURT: And that includes the nonbinding
8 stipulations that are contained in paragraphs six (a), (b),
9 (c), (d), (e), (f), sub (1), sub (2), sub (3), sub (4), (g),
10 (h), and sub (1) of (h). Is that correct?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: And it further extends to paragraph
13 seven of your plea agreement which attempt to stipulate
14 relevant conduct provable by the United States not to exceed
15 the following amounts and levels?

16 THE DEFENDANT: Yes, Your Honor.

17 THE COURT: But under paragraph eight, you reserve
18 the right to fight with the Government at sentencing over
19 whether your relevant conduct is less than a million dollars
20 and they don't have to concede that it is. Is that correct?

21 THE DEFENDANT: That's correct, Your Honor.

22 THE COURT: And in addition you agree to fight over
23 whether, under the guidelines, a sophisticated means and
24 your role in the offense may be applicable enhancements or
25 not?

1 THE DEFENDANT: That is correct.

2 THE COURT: You understand that it will be the
3 United States District Judge who will make the decision
4 based upon a preponderance of whatever evidence is presented
5 to him at the time of that sentencing hearing as to whether
6 the various enhancements, sophisticated means and role of
7 the offense, are applicable and if they are they could drive
8 up the amount of time under the guideline sentence as well
9 as the actual sentence. You understand that?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: And you understand it will be up to the
12 District Judge to determine whether or not, from a
13 preponderance of the evidence at your sentencing hearing,
14 your relevant conduct is more or less than a million dollars
15 and if it goes adverse to you, you understand that it will
16 drive up your guideline sentence and your actual sentence
17 within the statutory maximum?

18 THE DEFENDANT: I understand.

19 THE COURT: Under paragraph ten you and the United
20 States have agreed that if you meet certain preconditions,
21 the Government will recommend to the District Judge that you
22 receive a two level reduction for acceptance of
23 responsibility and three levels if applicable and recommend
24 that any sentence of incarceration should be at the lower
25 end of the applicable guideline range?

1 THE DEFENDANT: I understand.

2 THE COURT: Now do you also understand that the
3 lowest end may not necessarily be what the District Judge
4 gives?

5 THE DEFENDANT: I do understand.

6 THE COURT: Do you understand further that if you
7 don't get the two level reduction for acceptance of
8 responsibility, the additional one level if applicable for
9 timely acceptance or the lowest end--and/or the lowest end
10 of whatever the applicable guideline range is as a sentence
11 of incarceration, that the District--that you will have no
12 right to withdraw your guilty plea?

13 THE DEFENDANT: I do understand.

14 THE COURT: Do you understand that by entering a
15 guilty plea today you are admitting each and every element
16 and fact alleged in the Information relative to the crime
17 charged in Count One?

18 THE DEFENDANT: I do understand.

19 THE COURT: And it's a solemn thing that you're
20 doing and you don't get to withdraw that because you don't
21 get what you may be hoping for or expecting by way of a
22 guideline or actual sentence. Do you understand that?

23 THE DEFENDANT: I do understand.

24 THE COURT: Is there anything about what we've
25 discussed so far, mostly me telling you and you answering,

1 that you need time to talk over with your lawyer or you need
2 a further explanation of, sir?

3 THE DEFENDANT: I think I'm prepared.

4 THE COURT: Has anyone attempted in any way to
5 force you to plead guilty?

6 THE DEFENDANT: No, Your Honor.

7 THE COURT: Has any one threatened you in order to
8 get you to plead guilty?

9 THE DEFENDANT: No, Your Honor.

10 THE COURT: Has any one threatened any one who is
11 close to you in a personal way in order to get you to plead
12 guilty?

13 THE DEFENDANT: No, Your Honor.

14 THE COURT: Is your decision to plead guilty to
15 Count One your own free, voluntary, knowing and intelligent
16 decision?

17 THE DEFENDANT: It is.

18 THE COURT: Mr. Rees, do you believe you are guilty
19 of the offense charged in Count One of the Information and
20 each and every element in fact as charged in that count?

21 THE DEFENDANT: I do, Your Honor.

22 THE COURT: Do you understand that that is a felony
23 charge?

24 THE DEFENDANT: I do, Your Honor.

25 THE COURT: By pleading guilty to it you will be

1 adjudicated guilty of a felony?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Folks who are convicted of a felony
4 charge may lose the right to vote, the right to run for and
5 hold a public office, the right to serve on a grand or
6 petit, state or federal jury while they're incarcerated, and
7 perhaps longer dependent upon the law and rules in the area
8 in which they're living after release. Do you understand
9 that?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: Do you also understand that you will
12 lose the right to possess a firearm or ammunition for a
13 firearm as those terms are defined under federal law and
14 that that right is permanent unless the Judge or the Court
15 in--Court of the United States, should restore you to your
16 civil rights?

17 THE DEFENDANT: I understand.

18 THE COURT: And that's not likely to ever happen.
19 You understand that?

20 THE DEFENDANT: I do understand, sir.

21 THE COURT: Do you understand that your actual
22 sentence, and for that matter any guideline sentence used to
23 reach an actual sentence, may be driven up in the number of
24 months or time to be served by virtue of any prior firearm
25 offense convictions, prior violent felony offense

1 convictions or prior drug offense convictions that you may
2 have in your criminal history, if any?

3 THE DEFENDANT: Yes, sir.

4 THE COURT: Do you also understand that the Judge
5 is duty bound to take into account any prior criminal
6 history that you may have in the sentencing process?

7 THE DEFENDANT: I understand.

8 THE COURT: Now did you and your lawyers review a
9 Uniform Sentencing Guideline Chart similar to the one I'm
10 holding up?

11 THE DEFENDANT: Yes, Your Honor.

12 THE COURT: Did they review with you how the
13 criminal history categories going across the top worked?

14 THE DEFENDANT: They did.

15 THE COURT: Did they review with you how offense
16 levels going down the left-hand column of the chart worked?

17 THE DEFENDANT: Yes, sir.

18 THE COURT: And did they show you how offense level
19 going across intersects with a criminal history line coming
20 down relative to a range of months of imprisonment?

21 THE DEFENDANT: They did, Your Honor.

22 THE COURT: Do you understand that while the
23 lawyers can show you how the chart works and in the process
24 even estimate for you a potential guideline calculated
25 sentence that you might suffer, you can't take any estimate

1 that they may have given you as a promise or as a guarantee
2 by them to you--

3 THE DEFENDANT: I understand that.

4 THE COURT: --that the District Judge will see it
5 the same way and in fact if the Judge sees it differently,
6 the fact that he saw it differently is of no moment. You
7 will not be permitted to withdraw your guilty plea and it is
8 not going to be a basis for you to get out of your
9 conviction or your plea because of what your lawyers might
10 have told you. I'm telling you today that only the District
11 Judge has a right to set the sentence.

12 THE DEFENDANT: I understand.

13 THE COURT: And I don't want you pleading guilty by
14 any illusion that you might have that may have--or any hope
15 that you might have had that comes as a result of
16 discussions and review of the guideline chart with your
17 counsel.

18 THE DEFENDANT: I fully understand.

19 THE COURT: That's the way you understood it from
20 them; is that correct?

21 THE DEFENDANT: Yes, sir.

22 THE COURT: Now do you understand that the
23 supervised release of between two and three years is not
24 only in addition to any actual sentence of incarceration
25 that you may be required to serve, but that it comes with

1 rules that you have to live by while you're on it and should
2 you violate any of those rules and a petition be filed
3 saying that you did and it be proved at a hearing that you
4 did violate rules, that you could have that release revoked
5 and you could be reincarcerated?

6 THE DEFENDANT: I understand.

7 THE COURT: Did you understand that you'll be
8 required to pay a special assessment of one hundred dollars
9 under Title 18, United States Code, Section 3013?

10 THE DEFENDANT: Yes, Your Honor.

11 THE COURT: Did you understand that you--that an
12 amount of restitution will in fact be determined at the time
13 of your sentencing and you will be required to pay
14 restitution?

15 THE DEFENDANT: Yes, Your Honor.

16 THE COURT: And do you further understand that that
17 will be--that will be put into the form of a judgment order
18 and it will be able to be collected against assets, wages,
19 things that you may have going forward in the future?

20 THE DEFENDANT: I do understand.

21 THE COURT: And you understand that it will carry
22 interest with it?

23 THE DEFENDANT: Yes, sir.

24 THE COURT: Do you understand that if you have the
25 financial ability to pay the cost of your own incarceration,

1 those costs could be assessed against you?

2 THE DEFENDANT: Yes, sir.

3 THE COURT: Mr. Rees, incarceration is costing
4 approximately twenty-six hundred dollars per month; halfway
5 house confinement is approaching sixteen hundred dollars a
6 month and supervised release is running around--between two
7 fifty and three hundred dollars a month and those costs are
8 likely to continue to
9 Increase. Do you understand that?

10 THE DEFENDANT: I do, Your Honor.

11 THE COURT: And those are the costs that you could
12 be subjected to if you have the ability to pay them?

13 THE DEFENDANT: I understand.

14 THE COURT: And you can also be required to pay a
15 fine up to two hundred and fifty thousand dollars if the
16 Judge finds that you have the ability to pay a fine?

17 THE DEFENDANT: I understand.

18 THE COURT: Do you understand that as a convicted
19 felon you will be required to give a DNA sample?

20 THE DEFENDANT: I do, Your Honor.

21 THE COURT: Is there anything about the possible
22 consequences of your proposed plea of guilty that you don't
23 understand or that you time to talk over with your lawyer or
24 you want to ask some questions about?

25 THE DEFENDANT: No, I understand fully, Your Honor.

1 THE COURT: Mr. Rees, do you understand there is no
2 parole in the federal system and what that means is that you
3 will do the time that the District Judge sentences you to
4 serve?

5 THE DEFENDANT: I do understand that, Your Honor.

6 THE COURT: When I call upon you to plead today, do
7 you understand that you have a right to stand silent, in
8 which case I would enter a plea of not guilty for you; you
9 have a right to enter a not guilty plea on your own or by
10 counsel, in which case there would be a not guilty plea
11 entered of record and we would proceed forward in another
12 way or you may plead guilty? Do you understand that?

13 THE DEFENDANT: I do, Your Honor.

14 THE COURT: Do you understand, as I indicated
15 earlier, that pleading guilty admits each and every element
16 of the crime charged and does away with any future trial by
17 a jury on this charge?

18 THE DEFENDANT: I understand fully.

19 THE COURT: Now you have a right to a jury trial,
20 sir. That's guaranteed to you by the United States
21 Constitution. At that trial you're presumed innocent of all
22 of the charges that may be made against you. The Government
23 has to prove your guilt beyond a reasonable doubt using only
24 lawful evidence. You're entitled to the assistance of a
25 lawyer for your defense. You have a right to see and to

1 hear all the witnesses and have them cross-examined in your
2 defense. You have a right at that trial to decline to
3 testify or to offer any evidence because you have no burden
4 of proving your own innocence. The Government has the
5 burden of proof and it never shifts to you. However, it's
6 like any other right, if you want to give up your right to
7 remain silent, you can and you may take the stand and
8 subject yourself to cross-examination. You may call
9 witnesses and if your witnesses were unwilling to appear and
10 take the oath, the Court, through the subpoena power of the
11 Court, at your request, could order them to appear and take
12 the oath.

13 If you decide not to offer evidence; if you decide not
14 to testify; the fact that you did not testify or offer
15 evidence is not and cannot be used as proof that you did
16 what you're accused of and finally, you have a right to a
17 unanimous jury verdict.

18 Do you understand that you have all those rights that
19 are related to a jury trial?

20 THE DEFENDANT: I do, Your Honor.

21 THE COURT: And do you want to give up all those
22 rights by pleading guilty in which case there will be no
23 jury trial?

24 THE DEFENDANT: I'd like to give up those rights.

25 THE COURT: Is that your own free, voluntary,

1 knowing and intelligent decision?

2 THE DEFENDANT: It is, Your Honor.

3 THE COURT: Now, Mr. Rees, I've asked you a lot of
4 questions. Have you understood each and every question that
5 I have asked you?

6 THE DEFENDANT: I have, Your Honor.

7 THE COURT: Have you truthfully answered each and
8 every question that I have asked you?

9 THE DEFENDANT: Yes, Your Honor.

10 THE COURT: Do you need any additional time to talk
11 with your attorneys before I entertain whatever plea it is
12 that you are going to make?

13 THE DEFENDANT: I don't need any further time.

14 THE COURT: Have I asked the questions that are
15 appropriate in this particular case relative to Rule 11, Mr.
16 McWilliams?

17 MR. MCWILLIAMS: Yes, Your Honor.

18 THE COURT: How about you, Mr. Grimes?

19 MR. GRIMES: Yes, Your Honor.

20 THE COURT: All right. Then, without further ado,
21 Mr. Rees, will you please stand in your place?

22 (Defendant Standing)

23 THE COURT: David Rees, how do you plead to the
24 first count of the Information which charges you with Felony
25 Tax Evasion for the Tax Year 2006 between January 1, 2006

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1 and April 15, 2007, within the Northern District of West
2 Virginia, a felony?

3 THE DEFENDANT: Guilty, Your Honor.

4 THE COURT: Is that your own free, voluntary,
5 knowing and intelligent plea of guilty to that felony
6 charge?

7 THE DEFENDANT: Yes, Your Honor.

8 THE COURT: Mr. Grimes, do you know if your client
9 will make a statement today or make it only at his
10 sentencing hearing?

11 MR. GRIMES: We'll reserve for time of sentencing.

12 THE COURT: Very good. Mr. Rees, you may sit back
13 down.

14 (Defendant Seated)

15 THE COURT: Mr. McWilliams, I'll entertain any
16 evidence you want to offer up in support of the plea.

17 MR. MCWILLIAMS: United States calls Special Agent
18 Jason Gandee.

19 THE COURT: Mr. Gandee, is it?

20 THE WITNESS: Yes.

21 JASON GANDEE, GOVERNMENT'S WITNESS, SWORN

22 THE CLERK: You may be seated.

23 THE COURT: You may inquire.

24 DIRECT EXAMINATION

25 BY MR. MCWILLIAMS:

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1 Q. What is your occupation, sir?

2 A. I'm a Special Agent with IRS Criminal Investigations.

3 Q. And how long have you been a Special Agent with IRS?

4 A. Approximately 16 years.

5 Q. What's your post of duty?

6 A. Parkersburg, West Virginia.

7 Q. Now are you one of the agents that investigated the case
8 of Mr. Rees?

9 A. I am.

10 Q. And tell the Court how Mr. Rees came to the attention of
11 the IRS?

12 A. Through a public corruption investigation that started
13 in the Southern District of West Virginia.

14 Q. And what was his occupation at the time?

15 A. A businessman in Morgantown. His primary occupation was
16 the owner and operator of AKA Enterprises, which encompassed
17 a restaurant, a bar and a pizza shop.

18 Q. What was the name of the restaurant and bar?

19 A. The restaurant was the Vintage Room and the bar was Bent
20 Willey's.

21 Q. And is it fair to say that's one of the largest
22 restaurateurs--non-resort restaurateurs in the State?

23 A. Bar owner for sure. The restaurant was a smaller
24 enterprise. The bar was a high income producing entity.

25 Q. And did the IRS instigate an undercover operation

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1 involving the defendant?

2 A. We did.

3 Q. And what was the basis or the gist of what that
4 investigation showed?

5 A. It showed that the business was actually worth more than
6 the reported receipts and so our investigation proceeded
7 from there.

8 Q. And did the investigation result in the execution of
9 various search warrants?

10 A. Yes it did.

11 Q. And did it also investigate--involve investigation of
12 his CPA in Morgantown?

13 A. It did.

14 Q. And was that CPA also a target?

15 A. Yes.

16 Q. Did that CPA cooperate?

17 A. At first initially to a limited degree and then not.

18 Q. Did Mr. Rees, through his attorney and personally,
19 cooperate through the various phases of this investigation?

20 A. Mr. Rees has cooperated from the onset.

21 Q. Would you tell the Court generally how Mr. Rees was
22 getting money out of the business that was used for personal
23 living that did not get reported on his 2006 tax return?

24 A. Well, you had high cash producing entities, specifically
25 the bar and you also had a company credit card which was

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1 utilized so there were large sums of cash that were not
2 deposited and used for personal means and also the credit
3 card was used for personal expenses and not paid by Mr.
4 Rees, but rather the company.

5 Q. And did this occur in Monongalia County?

6 A. It did.

7 Q. And did he in fact file, based on your investigation, a
8 false 2006 income tax return where he reported approximately
9 \$188,316.00?

10 A. He did.

11 Q. And I realize these figures fluctuate through the
12 investigation, the Revenue Agent's investigation, plus a
13 civil investigation also, is that correct?

14 A. There was.

15 Q. And is it fair to say that the amount that was
16 unreported exceeded \$90,000.00 for that tax year?

17 A. The amount of tax; that's correct.

18 MR. MCWILLIAMS: I have no further questions.

19 THE COURT: Mr. Grimes, any questions?

20 MR. GRIMES: Just very briefly, Your Honor.

21 THE COURT: Yes, sir.

22 CROSS EXAMINATION

23 BY MR. GRIMES:

24 Q. Agent Gandee, good morning. How are you, sir?

25 A. Good. How are you?

1 Q. Would you agree that once the search warrants were
2 executed at Mr. Rees' home and businesses that's the first
3 time he had actual notice of your investigation?

4 A. That's correct.

5 Q. And as soon as that happened he secured counsel, myself,
6 to represent him personally and William Chadwick, an
7 associate of mine, to represent his corporations?

8 A. That's correct.

9 Q. And you've outlined to the Court that the primary
10 company, AKA Enterprises is the one that operates the
11 bar/restaurant business?

12 A. That's right.

13 Q. In fact the investigation found that Mr. Rees had
14 multiple businesses that he was operating funded primarily
15 through AKA?

16 A. That's right.

17 Q. The numbers that were calculated in terms of tax
18 liabilities, they in fact were calculated through Mr.
19 Chadwick and his assistance and me providing that to the
20 Government as part of the overall global reconstruction, is
21 that right?

22 A. That's right.

23 Q. So in terms of Mr. Rees' cooperation with the
24 Government, on a scale of one to ten in terms of stepping up
25 to the plate once he realized this problem, are you able to

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1 give the Court a--

2 A. I would say a ten.

3 MR. GRIMES: Thank you very much.

4 EXAMINATION BY THE COURT

5 BY THE COURT:

6 Q. Mr. Gandee, you understood from discussions with Mr.
7 Rees that before he filed the tax return he knew that he
8 was--and understood that he was using cash out of the
9 business and using the credit cards to pay personal expenses
10 as opposed to only company related debt?

11 A. Well, our investigation had indicated that strongly and
12 then once Mr. Rees was made aware of the investigation, Mr.
13 Rees admitted as much, yes.

14 Q. And he knew that when he filed the return that's in
15 question?

16 A. Yes.

17 THE COURT: All right. Very good. I have no
18 further questions. Do my questions evoke any additional
19 questions by counsel?

20 MR. MCWILLIAMS: No, Your Honor.

21 MR. GRIMES: I have nothing further.

22 THE COURT: All right. You may step back. Thank
23 you.

24 (Witness excused from stand)

25 THE COURT: Were you able to hear the testimony and

1 follow the testimony of Special Agent Gandee?

2 THE DEFENDANT: I was, Your Honor.

3 THE COURT: Is there anything about your
4 involvement in this crime in Count One of the Information,
5 as described by Mr. Gandee in questioning, that you disagree
6 with?

7 THE DEFENDANT: No, Your Honor.

8 THE COURT: All right. Based upon the testimony
9 and the answers to the colloquy under Rule 11 the Court will
10 enter an appropriate order this afternoon accepting Mr.
11 Rees' plea of guilty to Count One of the Information as
12 knowingly, voluntarily, freely and intelligently having been
13 given; that it's supported independent of the plea itself by
14 the testimony of Special Agent Gandee.

15 The Court will further find that he's competent to enter
16 the plea that he has entered. He understands the terms and
17 provisions of his written plea agreement, knowingly and
18 voluntarily entered into it, was never coerced; that he
19 understands the rights that he's giving up by pleading
20 guilty. He understands the consequences of pleading guilty,
21 including the statutory maximum penalty that he subjects
22 himself to by pleading guilty.

23 The Court will make other additional findings relative
24 to the guidelines and the specific consequences that he's
25 testified to here today.

1 Now, this is his first appearance in front of the Court.
2 What say the Government relative to release on conditions
3 pending sentencing by Judge Keeley?

4 MR. MCWILLIAMS: We would ask that he be released
5 on his own recognizance, Your Honor, and at some point soon
6 I would ask that if he has a passport that he surrender it.

7 THE COURT: Other than a passport surrender and not
8 obtaining a passport, is there any other restriction on his
9 travel?

10 MR. MCWILLIAMS: I don't think that's necessary,
11 Your Honor.

12 THE COURT: Very good. And no--and you don't have
13 to stand up, Mr. McWilliams. Is there any need for the
14 Court to go into the things that we use in drug related
15 cases in this case?

16 MR. MCWILLIAMS: No, Your Honor.

17 THE COURT: All right then. How about you, Mr.
18 Grimes, anything additional?

19 MR. GRIMES: Certainly concur in the Government's
20 recommendation. Mr. Rees is a long time--several decades of
21 contact with Morgantown, several ties to the community, both
22 business wise, family wise, et cetera, no prior criminal
23 record of any sort, no risk of flight. He does own a
24 property in the Bahamas that he's been rehabilitating for
25 purposes of selling and we asked about the back and forth,

1 and every time that occurred he notified the Government by
2 e-mail that he was taking that trip because it was damaged
3 during the hurricane so they're repairing it and putting it
4 up for sale. We hope the proceeds are going to go a long
5 way toward meliorating some of the debt that he owes. We
6 would ask that there be no restriction on his travel or at
7 least restriction only be that we give notice to the
8 Government as we've been doing.

9 THE COURT: Well, as I understand it now you need a
10 passport in order to fly out of the country to the Bahamas,
11 don't you?

12 MR. GRIMES: It's only just for closing. We don't
13 expect we're going to have to go back.

14 THE COURT: All right. Then that's fine. I just
15 wanted to make sure we were all on the same page relative to
16 that portion of the order.

17 All right. Mr. Rees, you're going to be released on
18 your own recognizance. You're not to violate any federal,
19 state or local law while on the release. You're to advise
20 the Court and your Pretrial Services Officer or Supervising
21 Officer in writing before you change your residence or your
22 telephone number. Where are you living now, sir, generally
23 speaking?

24 THE DEFENDANT: In Morgantown.

25 THE COURT: You still live in Morgantown?

1 THE DEFENDANT: Yes, sir.

2 THE COURT: All right. And that's been where
3 you've been living for a long time?

4 THE DEFENDANT: Thirty years.

5 THE COURT: All right, sir. You're to appear in
6 Court as required and if you should--when you are sentenced
7 you're to surrender for service of that sentence as ordered
8 by the District Judge. You will surrender your passport to
9 the Probation Officer at some point as he directs. You're
10 not to attempt to obtain another passport while this is on
11 going or international travel document. I believe that's
12 it.

13 MR. GRIMES: Thank you, Your Honor.

14 MR. MCWILLIAMS: Thank you, Your Honor.

15 THE COURT: All right. Then we'll be in recess--
16 now what you need--before I recess us, what I want you to
17 understand, Mr. Grimes, (sic) you'll have to go down and
18 meet with the United States Marshal Service briefly, then
19 come back up here and by then I'll have the modification of
20 this order setting conditions of release, you sign it at the
21 Clerk's desk and then you meet with Probation sometime later
22 this afternoon down at their office or later this morning
23 down at their office down the street and then you go about
24 your way. Anything further.

25 MR. GRIMES: No, Your Honor, thank you very much.

1 MR. MCWILLIAMS: No, Your Honor. Thank you.

2 THE COURT: There being nothing, we'll be in
3 recess. Thank you all.

4 (The hearing concluded at 11:09 a.m., 05-13-2013)

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CERTIFICATE

I, Linda L. Bachman, Certified Verbatim Reporter and Official Reporter of the United States District Court for the Northern District of West Virginia, do hereby certify that the foregoing is a true and correct transcript of the proceedings had in the above-styled action as digitally recorded and typographically transcribed by my.

I certify that the transcript fees and format comply with those prescribed by the Court and the judicial Conference of the United States.

Given under my hand this 18th day of November, 2014.

____/s/ Linda L. Bachman_____

Official Reporter, United States
District Court for the Northern
District of West Virginia